

REMARKS

Entry of the foregoing, reexamination and reconsideration of the subject application, pursuant to and consistent with 37 C.F.R. § 1.116, are respectfully requested in light of the remarks which follow.

I. Amendments to the Claims

By the foregoing amendments to the claims, claims 1 and 5 have been amended as discussed below.

The amendments to the claims have been made without prejudice or disclaimer to any subject matter recited or canceled herein. Applicants reserve the right to file one or more continuation and/or divisional applications directed to any canceled subject matter. No new matter has been added, and entry of these amendments to the claims is respectfully requested.

II. Response to Claim Objection

At pages 2-3 of the Office Action, claim 5 has been objected to for specifically reciting non-elected subject matter.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's objection, claim 5 has been amended to recite that the combination of oligonucleotide probes comprises the sequence identified with SEQ ID NO: 24. Accordingly, Applicants respectfully request reconsideration and withdrawal of this objection.

III. Response to Claim Rejections under 35 U.S.C. § 112

At page 3 of the Office Action, claims 1-5, 7-10, 13, 14, 23, and 24 has been rejected under 35 U.S.C. § 112, second paragraph, as purportedly being indefinite.

Specifically, the Examiner has stated that claim 1 should recite "based on detection of said hybridization complex" rather than "based on *said* detection of said hybridization complex."

In response, claim 1 has been amended as suggested by the Examiner. Thus, Applicants respectfully request reconsideration and withdrawal of this rejection.

IV. Response to Claim Rejections under 35 U.S.C. § 103

A. At pages 4-14, claims 1-5, 7-10, 13, and 23-24 have been rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Haung (U.S. Patent No. 5,645,994) in view of Haselbeck et al. (WO01/70955). This rejection is respectfully traversed.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's rejection, claim 1 has been amended to recite that the mixture of DNA primers comprises a DNA primer consisting of the sequence identified with SEQ ID NO: 76 and a DNA primer consisting of the sequence identified with SEQ ID NO: 77. Support for this amendment can be found at least at page 17, lines 10 to 25 of the specification. Applicants submit that the cited references do not teach or suggest using the DNA primers recited in the present claims.

Furthermore, with regard to claims 7 to 9 in particular, Haselbeck et al. teaches the use of gene expression arrays and microarrays, and states that gene expression arrays are used by researchers to help to identify optimal drug targets, profile new compounds and determine disease pathways. In contrast, the microarrays in the present application are used to identify and detect a pathogen, simultaneously resulting in more rapid diagnostics and obviating the need for additional culture tests. The present application is not directed to methods for identifying gene expression profiles. Accordingly, Applicants submit that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to combine the method of Huang with the nucleic acids recited in the present claims.

B. At pages 15-17, claim 5 has been rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Haung in view of Haselbeck et al., Hogan et al. (U.S. Patent No. 5,541,308), and Hopewell et al. (J. Bacteriol (1990)). This rejection is respectfully traversed.

Claim 5, which depends from claim 1, can be patentably distinguished from the cited references for at least the reasons set forth above. In addition, to expedite prosecution in the present application, and not to acquiesce to the Examiner's rejection, claim 5 has been amended to recite that the combination of oligonucleotide probes comprises the sequence identified with SEQ ID NO: 24. Applicants further submit that the cited references, taken alone or in combination, do not teach or suggest using the oligonucleotide probes recited in claim 5.

In view of the above, Applicants respectfully request reconsideration and withdrawal

of the rejections under 35 U.S.C. § 103.

CONCLUSION

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this Amendment and Reply, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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Date: April 30, 2009

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